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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

[REDACTED]

tlg

DATE: Office: CINCINNATI, OH File: [REDACTED]
AUG 31 2011

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Cincinnati, Ohio. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of [REDACTED]. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure. He is married to a United States citizen. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on December 30, 2008.

On appeal, counsel for the applicant asserts that an adjudicating officer inappropriately referenced the applicant's prior legalization application to ask him about his prior unlawful presence, and that the applicant is not inadmissible because the information the applicant provided during the interview was covered by the confidentiality provision of section 245A(c)(5)(A) of the Act. *Form I-290B*, received on January 29, 2009.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

The record indicates that the applicant entered the United States without inspection in 1981 and remained until he departed voluntarily in sometime in 2000. Therefore, the applicant was unlawfully present in the United States for over a year from April 1, 1997, the effective date of the unlawful presence provision of the Act until 2000, and is now seeking admission within ten years of his last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

The record includes, but is not limited to, counsel's brief; a statement from the applicant; country conditions materials on Togo; documents filed in relation to the applicant's Form I-485 and Form I-130 filings.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel for the applicant asserts that the officer interviewing the applicant in connection with his adjustment application in October, 2008 inappropriately referenced the applicant's prior legalization application in violation of the confidentiality provision of section 245a(c)(5) of the Act, 8 U.S.C. §1255(a)(c)(5). Specifically, counsel states that the applicant was asked to disclose prior entries into and periods of stay in the United States and that this information is subject to the confidentiality provisions as it "relates to" the applicant's previous legalization application. Counsel further asserts that, because the information falls under the confidentiality provision, it may not be used as a basis for finding the applicant inadmissible.

The AAO notes that the applicant's legalization application was withdrawn as of February 14, 2006. He was interviewed in October 2008 with regard to his I-485 application.

Section 245A(c)(5), 8 U.S.C. § 1255a(c)(5), Adjustment of Status of Certain Entrants before January 1, 1982, to that of Person Admitted for Lawful Residence, states in pertinent part:

(c)(5) Confidentiality of information.

(A) In general. Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, for enforcement of paragraph (6), or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986;

...

(D) Construction.

(i) In general. Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of

information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

The confidentiality provision found at section 245a(c)(5) of the Act, 8 U.S.C. § 1255a(c)(5), applies only to “information furnished by the applicant pursuant to an application filed under this section.” In this case, the applicant was asked about prior entries into the United States in connection with his adjustment application. The applicant testified that he had been in the United States from 1981 until 2000. Although the applicant had previously included this information on a legalization application, during the October 2008 adjustment information the information was provided in connection with the adjustment application. The Field Office Director’s finding of inadmissibility pursuant to section 212(a)(9)(B)(i)(II) was not based on any information provided by the applicant pursuant to his legalization application. Rather, it was based on information provided by the applicant pursuant to his Form I-485 application.

Based on these findings the record fails to establish that the Acting Field Office Director was precluded by section 245a(c)(5) of the Act from using the applicant’s testimony with regard to his previous period of unlawful presence. Therefore, the AAO finds that the applicant is inadmissible pursuant to Section 212(a)(9)(B)(i)(II) for his period of previous unlawful presence.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant’s spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is “not a definable term of fixed and inflexible content or meaning,” but “necessarily depends upon the facts and circumstances peculiar to each case.” *Matter of Hwang*,

10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence

in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant asserts that the relocating his family to Togo would be too dangerous. He asserts that they would not have adequate health care, employment opportunities, or political and economic security. He explains that the current government engages in unlawful killings and that he would be viewed as a target because he has been residing in the United States. He also explains that he fears his son would become a ritual voodoo sacrifice and that crime is rampant in Togo. The applicant also asserts that he wants his son to enjoy the quality of life offered in America, including the education and economic opportunities here.

The record contains country conditions materials on Togo. As noted above, children are not qualifying relatives in this proceeding, as such, any impacts on them are only relevant to the extent they impact the qualifying relative. While the country conditions materials are sufficient to establish general conditions in Togo, including a lower quality of life than what might be available in the United States, these materials are not sufficiently probative to establish that the applicant's spouse would experience extreme hardship upon relocation, or that relocating the applicant's son to Togo would result in an indirect hardship to the applicant's spouse. Specifically, the country conditions evidence in the record fails to corroborate the applicant's assertions that he will be targeted because he has lived in the United States or that his son will become a ritual voodoo sacrifice. Without evidence to corroborate the applicant's assertions or additional evidence establishing other impact to the applicant's spouse, the record does not contain sufficient evidence to establish that the impacts on her, even when considered in aggregate, rise above those commonly experience by the relatives of inadmissible aliens who relocate abroad with their family members.

The applicant asserts that his son needs him as he grows up and so that he can help provide for him financially to go to school. *Statement of the Applicant*, received December 11, 2008. However, as noted above, children are not qualifying relatives in this proceeding. As such, any hardship to them is only relevant as it impacts the qualifying relative. In this case, there is no evidence that any impacts on the applicant's son would indirectly impact the applicant's spouse to a degree of creating an uncommon hardship factor.

The AAO also notes that the applicant has not articulated the impacts, if any, which would be experienced by his spouse if she remained in the United States without the applicant. In the absence of any asserted hardships from the applicant, the AAO may not speculate regarding challenges his spouse may face as a result of separation from the applicant.

The record does not contain any documentation which indicates that the applicant's spouse will experience any impacts which rise above the common impacts experienced by the relatives of inadmissible aliens.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.